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No. 80-737
IN THE

Supreme Court of the United States

October Term, 1980.

CITIZENS AGAINST RENT CONTROL/COALITION FOR FAIR HOUSING, an unincorporated association; MASON-McDUFFIE, a California corporation; BERKELEY BOARD OF REALTORS, a California nonprofit association; BETTY GERITZ; MURIEL ROSENKRANZ; EVA FLOYSTRUP,

Appellants,

vs.

CITY OF BERKELEY, CALIFORNIA, a municipal corporation; THE BERKELEY CITY COUNCIL; THE BERKELEY FAIR CAMPAIGN PRACTICES COMMISSION, PATRICIA DEVITO, BETTY BENNETT, MERLIN EDWARDS, JOHN CHASEN, THOMAS DONOVAN, FAITH OTIS, SANDY MILLER, DAVID B. ROSENTHAL as members of the Berkeley Fair Campaign Practices Commission,

Appellees.

On Appeal From the Supreme Court of the State of California.

Brief of the City of Santa Monica, California, as Amicus Curiae in Support of Appellees.

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Appellees.

Brief of the City of Santa Monica, California, as Amicus Curiae in Support of Appellees.

The City of Santa Monica, pursuant to Rule 36 and with the consent of all parties filed herewith, submits the following amicus curiae brief in support of appellants City of Berkeley, *et al.*

Interest of *Amicus Curiae*.

The City of Santa Monica is a municipal corporation organized and existing under a freeholder's charter adopted pursuant to the Constitution of the State of California. In October, 1978, the City Council amended the Santa Monica Fair Elections Practices Ordinance, Santa Monica Municipal Code Sections 11201-215, to provide at Section 11209, that individual contributions to any candidate or ballot measure campaign are limited to no more than two cents times the voting age population (presently, $1,460.60). This provision was adopted pursuant to the City's authority to regulate with respect to municipal affairs, Cal. Const. Art. XI, §5, and is consistent with Section 22808 of the California Elections Code which permits even non-chartered cities to set limits on contributions in municipal elections.

The validity of Santa Monica Municipal Code Section 11209 insofar as it limits contributions to ballot measure campaigns is currently being challenged in an action for declaratory and injunctive relief entitled *Keist v. City of Santa Monica,* Los Angeles Superior Court, Case Number C 271814. On February 28, 1979, plaintiff's request for a preliminary injunction against the enforcement of the ordinance was denied by the Los Angeles Superior Court. A date has not yet been set for trial on the merits.

The issues raised in the Berkeley case are of great importance to the City of Santa Monica, since the outcome of this action will determine the validity of Section 11209 as it applies to ballot measure campaigns. This section was enacted and is believed necessary to ensure that moneyed interests do not dictate local politics in Santa Monica and to maintain broad public confidence and participation in the City's electoral process.

Summary of Argument.

Appellants (hereinafter, "C.A.R.C.") challenge the constitutionality of Section 602 of the Berkeley Reform Act of 1974 as it relates to limitations on the amount of contributions that any ballot measure campaign may submit or accept from any person. Despite the fact that the Berkeley ordinance makes no attempt to limit expenditures either by an individual or a campaign committee, C.A.R.C. argues that the $250 limitation on contributions violates its rights of free speech and association.

The Supreme Court of California reversed decisions of the trial court and the Court of Appeal to uphold the validity of the Berkeley ordinance. *Citizens Against Rent Control v. City of Berkeley*, 27 Cal. 3d 819, 167 Cal. Rptr. 84 (1980). In light of the importance of the initiative and referendum to the legislative process in California, and the potential for perversion of that process by unlimited contributions, the Court held the public purpose underlying the $250 limitations on candidate campaign contributions upheld by this Court in *Buckley v. Valeo*, 424 U.S. 1 (1976).

C.A.R.C. relies on the alleged distinction between candidate and ballot measure campaigns in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). However, that distinction is only incidental to the Court's determination that no compelling state interest was demonstrated in *Bellotti* to justify total denial of the plaintiff corporations's right to participate in ballot measure elections whether by contributions or direct expenditure.

Even if ballot measure campaigns provide less opportunity for direct purchase of political favors — although even this is open to question in local elections where candidates frequently ride the tails of successful ballot measures — the adverse impact of unlimited contributions on candidate and

ballot measure elections is otherwise identical. In both cases, the actual and perceived domination of the electoral process by the wealthy has the effect of undermining faith in the system and discouraging voters from participating in a process in which they believe they can have only marginal effect.

Indeed, in certain respects, unlimited contributions pose a greater threat to the integrity of the electoral process in ballot measure campaigns. While voters can make a judgment about the character and integrity of a candidate, apart from consideration of his or her backers, it is frequently difficult to gauge the intent and impact of ballot measures without knowing what interests expect to receive the ultimate benefit.

The Berkeley ordinance is precisely tailored to safeguard the electoral process from real or perceived domination by large financial interests while imposing only such restrictions on First Amendment rights as were deemed "minimal" in *Berkeley*.

Within the $250 limitation and to the extent of contributed service which is subject to no restriction, individuals are free to join together in campaign committees whose total expenditures are unlimited. Thus, as the California Supreme Court found, alleged rights of association are limited only in that the Berkeley ordinance does not permit "political contributors to dominate [ballot measure] committees and their campaigns by unconstrained financial pressure." 27 Cal. 3d at 830, 167 Cal. Rptr. at 91. The $250 limitation, in fact, enhances the associational interest of small contributors who would otherwise be powerless to shape presentation of an issue endorsed and presumably framed to the interests of major contributors.

The paramount right to advocate a position is not limited at all. Rather, the contribution limitation simply has the effect of channeling its exercise into direct expenditures. Although there is always a risk that the biggest spenders will have an undue influence on the electoral process, the risk is far less in the case of direct expenditures where the voters are immediately informed not only of a given position but of who or what is advocating it. Thus, direct expenditures, unlike contributions filtered through a faceless committee, have less potential to foster an apathetic electorate, but on the contrary, increase the amount of information available to the discriminating voter.

In sum, at the cost of very little, if any, compromise of legitimate First Amendment interests, the Berkeley ordinance would assure, in a way in which disclosure alone cannot, that the initiative and referendum are not reduced to a means of legitimizing economic domination of the political process.

ARGUMENT.

I.

The Initiative and Referendum Process Is Essential to Democratic Government in California and Must Be Protected From the Undue Influence of Moneyed Interests.

The California Constitution proclaims that "[a]ll political power is inherent in the people." Cal. Const. Art. II, §1. It has often been stated that the "exercise of initiative and referendum is one of the most precious rights of our democratic process." *Mervynne v. Acker*, 189 Cal. App. 2d 558, 563, 11 Cal. Rptr. 340, 344 (1961); *see, e.g., Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore*, 18 Cal. 3d 582, 591, 557 P.2d 473, 477, 135 Cal. Rptr. 41, 45 (1976).

The California Supreme Court stressed in its opinion in this case the preeminent importance of the initiative process in California politics, 27 Cal. 3d at 824-25, 167 Cal. Rptr. at 87, and noted that this Court, too, has recognized that " 'California's entire history demonstrates the repeated use of the referendum to give citizens a voice on questions of public policy . . .' " *Id.*, quoting from *James v. Valtierra*, 402 U.S. 137, 141 (1971).

Moreover, almost as old as California's tradition of initiative and referendum, is the history of state efforts to control their abuse by powerful moneyed interests. In 1921, concern over the influence of money in ballot measure campaigns resulted in legislative adoption of a campaign disclosure law. *See* Ch. 483, Cal. Stat. [1921] 983. In *Brown v. Superior Court*, 5 Cal. 3d 509, 96 Cal. Rptr. 584 (1971), in upholding stricter disclosure requirements with respect to ballot measure campaigns, the State Supreme Court traced

the early legislative history of the ballot measure disclosure requirements:

> . . . In 1921, 10 years after the Constitution was amended to provide for the initiative and referendum, the first disclosure provisions governing election campaigns for and against ballot measures was enacted. The following year a special committee of the Senate was appointed to investigate matters relating to the receipt and expenditure of sums of money in excess of $1,000 to secure the passage or defeat of measures appearing on the ballot at the general election in November 1922. It examined and found deficient the disclosure provision which related to ballot measures.

Id. at 520, 96 Cal. Rptr. at 591 (citations omitted).

The Senate Committee's conclusion was prompted by its findings with respect to the seven ballot measure campaigns generally agreed to have been the most fiercely contested:

> The committee might . . . say, as the result of its investigation, "Victory is on the side of the biggest purse." The winning of the election by the side that spent the most money in the . . . contests was too universal to be attributed merely to chance or accident. The power of money in influencing public opinion, its ability to carry popular elections through the expenditures for propaganda, literature, advertising and organized campaign workers was made strikingly manifest in the investigation of your committee. It presents a problem in direct legislation which the citizens of the State cannot safely ignore.

Report of Special Committee, 1923 Journal of the Senate, May 14, 1923, 1780, 1782-83.

The Committee found the problem of undisclosed expenditures exacerbated by "questionable, misleading and deceptive campaign methods." *Id.* at 1785. Among these, it noted:

> . . . the use of high sounding, patriotic names under which the real identity of the interested parties and actual proponents or opponents is disguised. While many campaign committees selected names that fairly indicated their purpose, others selected designations which gave the voter no indication as to the real purpose or nature of the organization. The most conspicuous example of the latter was the use of the name "Greater California League" by the opponents of the Water and Power Act. Such a name readily gives the impression of being a promotion organization which every citizen in California would feel free to join, and having nothing in its name to indicate that it was a political campaign organization.
>
> The testimony before the committees showed that the Greater California League was in reality merely the name under which Eustace Cullinan, employed by the power companies, conducted the campaign against the Water and Power Act in Northern California.

The answer to these problems in 1923 was more stringent disclosure. However, as these same abuses found by the committee in 1923 have persisted over time, disclosure itself has proved an inadequate means of assuring that the initiative and referendum process is not corrupted by the domination of money interests.[1]

In upholding the Berkeley ordinance as motivated by a desire to return vitality to the initiative process, the Cali-

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[1]The concern has resulted in a variety of disclosure and other reform legislation at the state level. *See* Political Reform Act of 1974, Cal. Govt. Code §§81000 *et seq.*; Waxman-Dymally Campaign Disclosure Act, Cal. Elections Code §§11500 *et seq*. The importance of controlling campaign abuses is reflected in the fact that local governments in California are empowered to adopt requirements more restrictive than those contained in state statutes. *See* Cal. Elections Code §22808; Cal. Govt. Code §81013. The Legislature has specifically provided that a city may "limit campaign expenditures or contributions in municipal elections." Cal. Elections Code §22808.

fornia Supreme Court identified the propensity of "large contributors [to] use the power of their purse to overcome the power of reason, . . ." 27 Cal. 3d at 827, 167 Cal. Rptr. at 88, as thwarting the intended purpose of the initiative and referendum and resulting in the corruption of the electoral process as a whole. *Id.*, 167 Cal. Rptr. at 88-89. It carefully scrutinized the well-documented "nexus between voter apathy and large campaign contributions." *Id.* at 828, 167 Cal. Rptr. at 89, and stated:

> Here, it is argued that the electoral process is similarly corrupted by such contributions because voters lose confidence in our governmental system if they come to believe that only the power of money makes a difference. In another context we recognized the danger of such a loss of confidence: "One disturbing phenomenon of the current political scene of which we may take judicial notice is an apparent substantial increase in voter apathy. The erosion and decay caused by the acid of indifference, unconcern, and lack of participation, if prolonged, may pose a danger to the democratic institutions, far more subtle and invidious than any other." (*Johnson v. Hamilton* (1975) 15 Cal. 3d 461, 471, 125 Cal. Rptr. 129, 134, 541 P.2d 881, 886.)

Id. at 827-28, 167 Cal. Rptr. at 89. *See also Gayle v. Hamm*, 25 Cal. App. 3d 250, 257-58, 101 Cal. Rptr. 628, 634 (1972).

The history of California politics in the 20th century is one of commitment to the initiative process and to preserving the integrity of that process from the adverse effects of unchecked financial influence. It is in this context that C.A.R.C.'s challenge to Section 602 of the Berkeley Election Reform Act must be evaluated.

II.

Ballot Measure Campaign Contributions, Like Contributions to Candidate Campaigns, May Constitutionally Be Limited to Prevent Corruption of the Electoral Process.

This Court has repeatedly stated that First Amendment interests, although entitled to great weight, are not absolute. Thus, even a "significant interference" with protected rights of political expression and association is not invalid "if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedom." *Buckley v. Valeo*, 424 U.S. 1 (1976); *Consolidated Edison v. Public Service Commission*, ... U.S. ...., 65 L. Ed. 2d 319, 326 (1980). The First Amendment interests alleged by C.A.R.C. must therefore be evaluated alongside the other legitimate societal interests of a democratic government.

In *Berkeley, supra*, this Court invalidated provisions of the Federal Election Campaign Act of 1971 which limited individual expenditures in support of a candidate, but upheld limitations on individual contributions to candidate campaigns. In so doing, the Court recognized the potential of large contributions to corrupt the political process and the compelling governmental interest in preventing such corruption:

> . . . Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign . . . To the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined. . . .

Id. at 27. The Court also identified a substantial governmental interest in preventing that erosion of public confidence in the electoral processes which could result from even the appearance of impropriety.

> Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. . . . [Here,] Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent."

Id., quoting from *Civil Service Commission v. Letter Carriers*, 413 U.S. 548, 564 (1973).

Significantly, the Court in *Berkeley* specifically found that the limitations on campaign contributions, as opposed to expenditures, "entail[ed] only a *marginal* restriction upon the contributor's ability to engage in free communications." 424 U.S. at 20 (emphasis added).

The Court did not distinguish between contributions and direct expenditures when, in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), in a sharply divided 5-4 decision, it invalidated a Massachusetts statute which totally prohibited corporations from participating in ballot measure campaigns not directly affecting the corporation's property, business or assets. Thus faced with an enactment which would, except in legislatively defined circumstances, deny to corporations any First Amendment right of political expression, the Court held that "[i]n the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects upon which persons may speak and the speakers who address a public issue." *Id.* at 784-85.

C.A.R.C. seizes upon certain language in the *Bellotti* opinion to support its contention that the *Berkeley* analysis is inapplicable to ballot measure campaign contributions. The Court in *Bellotti*, in rejecting the notion that corporate money and power is inherently destructive of the referendum process, noted that "[t]he risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue." 435 U.S. at 790. The remark, which in any event must be read in the context of the total deprivation of First Amendment rights effected by the Massachusetts law, advances C.A.R.C.'s position only if it is assumed that the only justification for limiting contributions is the risk of candidate corruption. This is plainly not the case.

The *Bellotti* Court, itself, recognized other compelling interests which would justify governmental intervention, among them, "[p]reserving the integrity of the electoral process," " 'sustain[ing] the active alert responsibility of the individual citizen . . .' " and "[p]reservation of the individual citizen's confidence in government. . . ." 435 U.S. at 788-89. The basis for the holding in *Bellotti* was that the factual record in that case did not demonstrate that these interests would be furthered by silencing corporate discussion of referendum issues:

> . . . If appellees's arguments were supported by record or legislative findings that corporate advocacy threatened imminently to undermine the democratic process, thereby denigrating rather than serving First Amendment interests, these arguments would merit our consideration. But there has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts, or that there has been any threat to the confidence of the citizenry in government.

435 U.S. at 789-90 (citations omitted).[2]

By contrast, there is clear evidence that, in California, the domination of ballot measure campaigns by large contributors hiding behind "high sounding, patriotic names," Report of Special Committee, *supra*, at 1785, has thwarted the democratic purposes of the initiative process and contributed to a loss of faith in that system. *See generally* discussion in the opinion of the California Supreme Court, 27 Cal. 3d at 824-29, 167 Cal. Rptr. at 87-90, and Section I, *supra*. Whatever the actual corrupting influence of large contributions on ballot measure campaigns — and we cannot agree that in local elections, where issues and candidates often go hand-in-hand, political favors may not be as readily, if somewhat more discreetly obtained, by supporting a candidate's favorite issue — the perceived potential for economic domination of political processes can not be gainsaid. Indeed, what is public apathy if not tangible evidence that the average voter perceives the electoral process to be a field in which only the rich can meaningfully participate?

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[2]There is further a strong implication in *Bellotti* that the Court viewed the asserted governmental interests as a sham; thus, in discussing the additional claim that the statute protected the rights of minority shareholders, the Court found this purpose "belied" by the provisions of the statute and noted, with reference to the express statutory bar on corporate discussion of individual taxation issues, that "the legislative may have been concerned with silencing corporations on a particular subject." 435 U.S. at 793.

Similarly, in *Let's Help Florida v. McCrary*, 621 F.2d 195 (5th Cir. 1980), *appeal docketed* No. 80-970 (December 8, 1980), a case which relies on the above-cited language in *Bellotti* to strike down a statutory limitation on ballot measure campaign contributions, there is also a suggestion that the statutory provisions were inconsistent with the governmental purpose alleged. Thus, the court noted that the statute would not advance the alleged disclosure function of the regulation since large contributors were not prevented from forming multiple partisan campaign committees and simply contributing the maximum amount to each. *Id.* at 200.

There are two primary purposes served by limiting contributions to ballot measure campaigns. The first is to assure that small contributors will not be dissuaded from actively participating in the campaign process. In this report, the danger that campaign committees will be dominated by major contributors is the same regardless of whether the pressure is brought to bear on a candidate or ballot measure election. The second purpose is to enable the electorate to evaluate political argument in terms of the interests of those who are its real advocates. In this respect, the potential for abuse is far greater in the context of ballot measure campaigns.

In *Brown v. Superior Court, supra,* the California Supreme Court drew this distinction:

> It is common knowledge that in the majority of cases a candidate for public office has been nominated or endorsed by a political party, the policies of which are widely known. Voters may become aware of candidate's qualifications, in part, through their long-standing knowledge of the candidate's party and of politically oriented personalities who endorse the candidate. A ballot measure, on the other hand, is presented to voters without a historical background of established political support, and voters are unable to make the same quality judgment without knowledge of established persons or entities who or which are the real advocates or opponents of the measure.

5 Cal. 3d at 521. The same rationale which, in *Brown,* was held to justify *stricter* disclosure with regard to ballot measure contributions, refutes C.A.R.C.'s contention that such contributions are less destructive of democratic electoral processes and less subject to regulation than the candidate campaign contributions considered in *Berkeley*.

It is important to note that the *Brown* argument is not based on a paternalistic view but on the realities of political advocacy. Initiative ballot measures are framed by their proponents and campaign committees are formed and christened by those who finance them. Just as the paid voice of the power companies found it politically expedient to campaign under the banner of the "Greater California League," *see* Special Legislative Report, *supra*, so too, a proposed state constitutional amendment on the June 3, 1980 ballot, which would have eliminated existing local rent control measures and restricted the scope of newly enacted rent control legislation, was titled "Rent Control" and sponsored by a coalition of real estate interests under the name Californians for Fair Rents.

If the initiative and referendum are to function as intended as a "vision of direct democracy," *Citizens Against Rent Control, supra*, 27 Cal. 3d at 827, 167 Cal. Rptr. at 88, the process must be perceived by the electorate as fair, incorruptible and accessible, and the electorate itself must be fully informed. Even if large contributions to ballot measure campaigns do not pose a direct threat of candidate corruption, they undercut other governmental interests of equally compelling proportions. These interests, which include maintaining the real and apparent integrity of the electoral process, the encouragement of an active and alert electorate, and the preservation of individual confidence in government, *Bellotti, supra*, 435 U.S. at 788-89, are clearly furthered by the contribution limits contained in Section 602 of the Berkeley Election Reform Act of 1974.

III.

The Berkeley Ordinance Is Narrowly Tailored to Prevent Perversion of the Electoral Process by Moneyed Interest While Imposing Only a Minimal Burden on the Exercise of First Amendment Rights.

Unlike a limitation on expenditures which literally restricts the volume of permissible political activity, a limitation on contributions merely redirects the form which po-

litical activity will take. In *Buckley, supra,* the Court noted that the effect of the limitation was "to require candidate and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression." 424 U.S. at 22. The Court also indicated the limited impact of the restriction on individual rights of free expression and association:

> A contribution serves as a general expression of popular support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptively with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may given to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by the contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.

Id. at 24 (citations omitted).

C.A.R.C. argues that contributions to ballot measure campaigns, due more than a symbolic expression of support; it reasons that, unlike contributions to candidate campaigns, such contributions are not filtered through a candidate but translate directly into advocacy of a particular position, although C.A.R.C. hastens to add, contributors "do not necessarily control the specific manner in which their money will be spent." Appellants' Brief at 13.

This attempted distinction raises questions concerning the very effects of contributions on the political process which support the need for regulation. Such contributions were deemed "symbolic" in *Buckley* because they are passed out of the control of the contributor into the hands of a presumably independent campaign committee. To the extent that C.A.R.C. argues that contributions bear a proportionate rather than a symbolic relationship to the conduct of a ballot measure campaign, it would appear to assert a right of "political contributors to dominate such [campaign] committees by unconstrained financial pressure." *Citizens Against Rent Control, supra,* 27 Cal. 3d at 830, 167 Cal. Rptr. at 91. As the California Supreme Court noted, no case has ever recognized such a right within the scope of First Amendment protection. On the contrary, it is the associational interests of small contributors to pool their money and services in a central committee where all contributions have equal symbolic value and weight that require protection. The contribution limitation serves the purpose. At the same time, if as C.A.R.C. appears to argue, ballot measure contributions are distinguishable from contributions to a candidate because they are not transmitted by the process of passing through a committee but retain their character as a "yes or no" vote on a single issue, then what is it appellants would derive from expressing their vote and their message in the voice of a committee? The answer can only be that the committee lends a legitimacy and conveys a sense of broad support for the positions it espouses.

The greater legitimacy of a committee properly exists, however, only to the extent that it is, in fact, a broad-based association of many individual supporters. Conversely, to the extent a committee would speak only for narrow moneyed interests, it is reasonable to deny such interests the prestige of a presumably popularly-based committee and

require them to make direct expenditures and communicate these political messages in their own name. The contribution limitation, in effect, assures that a ballot measure campaign committee is the broad-based popular organ it purports to be. To allow narrow interests to hide behind a "high sounding patriotic name" constitutes a deceptive practice basically antithetical to the intent of the initiative process.

Thus, the contribution limitation infringes only nominally, if at all legitimate First Amendment interests while extenuating the most deceptive, hence the most insidious effects, of financial influence on the electoral process.

C.A.R.C. argues that limitations on contributions "only serve randomly" the interests of preserving the integrity of the political process and eliminating voter apathy, Appellants' Brief at 30, because the influence of large expenditures still is not and cannot be eliminated. It is true that large expenditures may unduly influence an election result; however, they do not pose the same threat to the election process itself. In the same way that disclosure requirements "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity," *Buckley, supra,* 424 U.S. at 67, requiring moneyed interests to make expenditures directly eliminates voter perceptions that the electoral process is being manipulated by forces which the average voter is incapable of understanding or effecting. Rather than contributing to voter apathy, rechanneling large money into direct expenditures increases the amount of information available to the public and encourages the electorate to take a more active and vigilant role in ballot measure campaigns. ". . . [w]hen political views are expressed directly by individuals and corporations rather than indirectly or covertly through committees, the voters are immediately made aware of the interested parties and can evaluate their motivation."

Citizens Against Rent Control, 27 Cal. 3d at 831, 167 Cal. Rptr. at 91.

At the same time, by preventing large contributions from being funneled through nominally independent campaign committees, the contribution limitations ensures that all contributors to such committees will have equal value and, thus, encourages wider involvement in the campaign process.

Although in some respects contribution limitations serve many of the same functions as disclosure, the Court many accept the legislative judgment as it did in *Buckley, supra*, that "disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." 424 U.S. at 28. As the California Supreme Court pointed out, even with disclosure requirements, ". . . the campaign propaganda and the identification are not simultaneous: inducements are disseminated and voter impressions are formed substantially before the sources of committee financing are revealed." *Citizens Against Rent Control, supra*, 27 Cal. 3d at 831, 167 Cal. Rptr. at 91. Thus, it concluded, "mere disclosure" is insufficient to secure the fundamental purpose of the initiative to make the electoral process accessible to the people. *Id.*

The Berkeley ordinance is precisely tailored to "restrict the one means [of engaging in political activity] that represents a danger rather than an aid to the electoral process." *Id.* Having failed to demonstrate more than the "minimal" restriction of First Amendment rights upheld in *Berkeley, supra*, appellants can claim no community from the compelling societal purposes that support Section 602.

> [O]ur democracy has moved a long way from the town hall, one man, one vote conception of our Framers. Politics has become a growth industry and a way of life for millions of Americans. The corrosive influence of money blights our democratic processes. We have not been sufficiently vigilant; we have failed to remind ourselves, as we moved from town halls to today's quadrennial Romanesque political extravagances, that politics is neither an end in itself nor a means for subverting the will of the people.

Buckley v. Valeo, 519 F.2d 821, 897 (D.C. Cir. 1975) (en banc), *aff'd. in part*, 424 U.S. 1 (1976).

IV.
Conclusion.

Section 602 of the Berkeley ordinance does not purport to equalize the political voice of all members of the society. *Cf. Bellotti, supra*, 435 U.S. at 790-91. Moneyed interests can still buy more airtime and newspaper space and paid political workers to espouse their points of view. What Section 602 does attempt to do is to assure that big money does not, in effect, raise the ante in the political game so that the average voter cannot or — almost as bad — believe he or she cannot meaningfully participate. This purpose, essential to preserve the initiative process as a dynamic realization of democratic ideals, is precisely served by the contribution limitation with little or no infringement of any protected First Amendment interest.

For these reasons, the City of Santa Monica as amicus curiae respectfully requests that the decision of the California Supreme Court upholding the validity of Section 602 be affirmed.

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Respectfully submitted,

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